



April 6, 2001

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## ENGROSSED SENATE BILL No. 418

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DIGEST OF SB 418 (Updated April 4, 2001 9:39 AM - DI 96)

**Citations Affected:** IC 5-14; IC 8-23; IC 9-21.

**Synopsis:** Various highway matters. Eliminates the requirement that a contractor must submit the written consent of the surety of the contractor's bond before the contractor may be permitted to draw any part of the retained percentage of a contract withheld by the Indiana department of transportation. Repeals the requirement that, until there has been substantial completion of an Indiana department of transportation contract, payment on the contract may not exceed 97% of the estimated cost of the completed work. Repeals additional provisions: (1) requiring that the retainage, upon the contractor's request, be deposited in an interest bearing escrow account with the treasurer of state or the treasurer of state's designee acting as escrow agent; and (2) permitting the treasurer of state to charge a fee for these services. Provides that public records relating to negotiations between the Indiana department of transportation and landowners are excepted from disclosure if the records are created in anticipation of the negotiations or while the negotiations are in progress. Provides that the Indiana department of transportation may not give consent to openings in state route number 331 other than at the intersection of certain highways, and may not issue permission for a curb cut along state route number 331.

**Effective:** July 1, 2001.

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### Riegsecker, Antich, Craycraft

(HOUSE SPONSORS — COOK, MCCLAIN)

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January 18, 2001, read first time and referred to Committee on Transportation and Interstate Cooperation.

February 1, 2001, reported favorably — Do Pass.

February 5, 2001, read second time, ordered engrossed. Engrossed.

February 6, 2001, read third time, passed. Yeas 47, nays 1.

HOUSE ACTION

February 26, 2001, read first time and referred to Committee on Roads and Transportation.

April 5, 2001, amended, reported — Do Pass.

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April 6, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## ENGROSSED SENATE BILL No. 418

A BILL FOR AN ACT to amend the Indiana Code concerning transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-14-3-4, AS AMENDED BY P.L.37-2000,
- 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2001]: Sec. 4. (a) The following public records are excepted
- 4 from section 3 of this chapter and may not be disclosed by a public
- 5 agency, unless access to the records is specifically required by a state
- 6 or federal statute or is ordered by a court under the rules of discovery:
- 7 (1) Those declared confidential by state statute.
- 8 (2) Those declared confidential by rule adopted by a public
- 9 agency under specific authority to classify public records as
- 10 confidential granted to the public agency by statute.
- 11 (3) Those required to be kept confidential by federal law.
- 12 (4) Records containing trade secrets.
- 13 (5) Confidential financial information obtained, upon request,
- 14 from a person. However, this does not include information that is
- 15 filed with or received by a public agency pursuant to state statute.
- 16 (6) Information concerning research, including actual research
- 17 documents, conducted under the auspices of an institution of

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higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of his scores.

(5) The following:

(A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

**(B) Records relating to negotiations between the department of transportation and landowners if the records are created in anticipation of the negotiations or while the negotiations are in progress.**

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(C) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

~~(C)~~ (D) When disclosing a final offer under clause ~~(B)~~, (C), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

**(E) Notwithstanding clause (B), the terms of the final offer of public financial resources communicated by the Indiana department of transportation to a landowner shall be available for inspection and copying under section 3 of this chapter after negotiations with that landowner have terminated.**

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request

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being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of his identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing advisory committee. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations

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that concern the driver.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

(A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or

(B) specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes.

A policy adopted under subdivision (3) must be uniform and may not discriminate among similarly situated commercial entities.

(d) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(e) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(f) Notwithstanding subsection (e) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 2. IC 8-23-6-6.5 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 6.5. The department may not give consent to an opening in state route number three hundred thirty-one (331), as described in section 1 of this chapter, other than at the intersection of the following highways:**

- (1) The Indiana toll road.**
- (2) Douglas Road.**
- (3) Day Road.**
- (4) McKinley Highway.**
- (5) Jefferson Boulevard.**
- (6) Highway 933 or Lincoln Way East.**
- (7) Harrison Road or 12th Street.**
- (8) Dragoon Trail.**
- (9) The most recently established U.S. highway 20 bypass as of January 1, 1997.**

SECTION 3. IC 8-23-9-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 17.** At any time after the contract has been substantially completed, the contractor may be permitted to draw any part of the retained percentage withheld by the department in an amount determined by the department to be in the best interest of the state, provided the contractor files a written request ~~accompanied by the written consent of the surety upon the contractor's bond;~~ on forms provided by the department for requests. The department may pay to the contractor any part of the retained percentage the department determines is in the best interest of the state even though the contractor does not request payment, provided that the department notifies the contractor ~~and the surety upon the contractor's bond~~ of the department's intent to do so at least thirty (30) days in advance of the payment. The fact that the contractor is permitted to withdraw a part of the retained percentage, or that the department pays a part of the retained percentage, shall in no way release or relieve the contractor on the contract. ~~or the contractor or the contractor's surety on the bond.~~

SECTION 4. IC 9-21-19-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 1. (a)** A person may not:

- (1) construct a private entrance, driveway, or approach connecting with a highway in the state highway system or the state maintained route through a city or town; or
  - (2) cut or remove a curb along a highway;
- without a written permit from the Indiana department of transportation. The action must be in accordance with the rules and requirements of



1 the department.

2 **(b) Notwithstanding subsection (a), the Indiana department of**  
3 **transportation may not issue a permit for a curb cut at any point**  
4 **along state route number three hundred thirty-one (331), as**  
5 **described in IC 8-23-6-1.**

6 SECTION 5. THE FOLLOWING ARE REPEALED [EFFECTIVE  
7 JULY 1, 2001]: IC 8-23-9-15; IC 8-23-9-19; IC 8-23-9-20.

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SENATE MOTION

Mr. President: I move that Senators Antich and Craycraft be added  
as coauthors of Senate Bill 418.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Transportation and Interstate Cooperation, to which was referred Senate Bill No. 418, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 418 as introduced.)

RIEGSECKER, Chairperson

Committee Vote: Yeas 9, Nays 0.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred Senate Bill 418, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-14-3-4, AS AMENDED BY P.L.37-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.
- (3) Those required to be kept confidential by federal law.
- (4) Records containing trade secrets.
- (5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
- (6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:
  - (A) concerning any negotiations made with respect to the research; and
  - (B) received from another party involved in the research.
- (7) Grade transcripts and license examination scores obtained as part of a licensure process.
- (8) Those declared confidential by or under rules adopted by the supreme court of Indiana.
- (9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.
- (10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

- (1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for

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inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

- (A) a public agency;
- (B) the state; or
- (C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of his scores.

(5) The following:

(A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

**(B) Records relating to negotiations between the department of transportation and landowners if the records are created in anticipation of the negotiations or while the negotiations are in progress.**

(C) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

~~(C)~~ **(D)** When disclosing a final offer under clause ~~(B)~~, **(C)**, the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

**(E) Notwithstanding clause (B), the terms of the final offer of public financial resources communicated by the Indiana department of transportation to a landowner shall be available for inspection and copying under section 3 of this chapter after negotiations with that landowner have**

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**terminated.**

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

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(A) the donor requires nondisclosure of his identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing advisory committee. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations that concern the driver.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of

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higher education.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

(A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or

(B) specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes.

A policy adopted under subdivision (3) must be uniform and may not discriminate among similarly situated commercial entities.

(d) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(e) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(f) Notwithstanding subsection (e) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 2. IC 8-23-6-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 6.5. The department may not give consent to an opening in state route number three hundred thirty-one (331), as described in section 1 of this chapter, other than at the intersection of the following highways:**

(1) The Indiana toll road.

(2) Douglas Road.

(3) Day Road.

(4) McKinley Highway.

(5) Jefferson Boulevard.

(6) Highway 933 or Lincoln Way East.

(7) Harrison Road or 12th Street.

(8) Dragoon Trail.

(9) The most recently established U.S. highway 20 bypass as of January 1, 1997."

Page 2, between lines 1 and 2, begin a new paragraph and insert:

"SECTION 4. IC 9-21-19-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) A person may

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not:

(1) construct a private entrance, driveway, or approach connecting with a highway in the state highway system or the state maintained route through a city or town; or

(2) cut or remove a curb along a highway;

without a written permit from the Indiana department of transportation. The action must be in accordance with the rules and requirements of the department.

**(b) Notwithstanding subsection (a), the Indiana department of transportation may not issue a permit for a curb cut at any point along state route number three hundred thirty-one (331), as described in IC 8-23-6-1."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 418 as printed February 2, 2001.)

COOK, Chair

Committee Vote: yeas 10, nays 0.

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